Supreme Court, U.S.
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No. 93-1717

In The Supreme Court Of The United States

OCTOBER TERM 1993

GERALD J. SNYDER

PETITIONERS,

VS.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; CONSOLIDATED FREIGHTWAYS, INC. A CALIFORNIA CORPORATION; AND CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 150, AN UNINCORPORATED LABOR ORGANIZATION.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

JAMES JOSEPH LYNCH, JR.
ATTORNEY AT LAW (SBN 85805)
P.O. BOX 336
SACRAMENTO, CA 95812-0336
(916) 448-7871

ATTORNEY FOR PETITIONER

All parties, and known subsidiaries, are listed in caption.

THE QUESTIONS PRESENTED FOR REVIEW

1. In view of Section 301, Labor Management Relations Act, is Restatement (2nd) Contracts, § 207, an interpretation favoring the public, the proper standard in the construction of a Collective Bargaining Agreement to protect the interests of intended third party beneficiary Union members who have no direct control over the collective bargaining process?

2. Did Appellant produce sufficient evidence to demonstrate a genuine triable issue of fact with respect to his claim of a breach of a duty of fair representation by Union in the failure to timely file a protest?

3. Did Appellate produce sufficient evidence to demonstrate a genuine triable issue of fact with respect to his claim of a breach of the collective bargaining agreement by Consolidated in failing to honor 40 trips?

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RESPONDENTS.

Petition for Writ of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

REPLY BRIEF

MATTERS UNDISPUTED

Respondents do not dispute the allegations of the Petition with respect to Opinions Below, Jurisdictional Statement, Statutory Provisions Involved, Jurisdiction of the District Court, or the accuracy of the record set forth in the appendix to the petition.

MATTERS OBJECTED TO

Respondents have attempted to recast the issues for which review is sought in terms which do not accurately reflect the points raised by Petitioner in the Petition, then argue on the *false a priori* assumption of issues not properly before the court. Petitioner objects to the issues as framed by Respondents as not relevant.

MATTERS WHICH ARE DISPUTED

Respondents characterization of Article 58 (Opposition, p. 2, ¶ 2) is grossly misleading; Article 58

must read in pari materia with the rest of the contract. As so read, the meaning of the terms are readily apparent. (Pet., App. p., -18-; "Short line", App. p. -21-; "Turnaround Operations", App. p. -21-,.-22-; "Layover", App. p. -22-; "Sleeper Cab Operations", App. p. -22-, -23-; r 21, 1991. While still somewhat vague, using the objective "four corner" test, bolstered by resort to objective rules of construction, rather than the self-serving rules of construction advocated by respondents, an understanding of the terms can be ascertained.

In Opposition, Respondents claim they were "using the method accepted by both parties to the contract since its inception, ..." (Reply, pp. 2-3.) The problem is that the records does not support the contention because Respondents never produced any objective business records evidencing a history or standard in long use prior to the controversy; instead they relied on their own self serving affidavits produced after the controversy and during litigation.

In Opposition, Respondents claim that "Plaintiff, without any explanation for the method used, calculated his 40th tour" citing the Appellate Opinion and the Trial Court Opinion. (Reply, p. 3, ¶ 2) In point of fact, the record reflects that Snyder did tender his manner of calculation. (Pet. App., pp. -24-, -26-.)

Respondents claim "that Petitioner had ... credit[ed] himself with multiple tours of duty" citing Pet. App., pp. -33-, -34-. (Reply, p. 5, ¶ 2.) The fact is the "Tours" cited by Respondents at Appendix Page 34 are indistinguishable from the other tours which are not contested. (See, Pet. App., -24- to -26-.)

REASONS IN REPLY FOR GRANTING WRIT

I.

RESPONDENTS DO NOT ARGUE THE ISSUES RAISED BY PETITIONER, BUT CONFINED THEIR ARGUMENTS TO A SUBJECTIVE INTENT ARGUMENT NEVER

RAISED OR URGED

A. USE OF RESTATEMENT DOES NOT DEFEAT THE NEED FOR A UNIFORM FEDERAL STANDARD.

Respondents claim that "plaintiff's "self-serving conception of the public interest conflicts directly with an expressly stated and judicial recognized goal of congress -- promotion of uniform federal labor law encouraging unions and employers to contract for the ... final resolution of disputes [cite omitted]" and "Unions and employers would not enter national agreements if each state, or individual employee, was able to interpret the agreement to suit its (his) needs" the use of restatement should be rejected. (Reply, 11, 12.)

The argument misses the point because Petitioner never suggested his intent should be the critical means of ascertaining the meaning of a contract, but rather suggested that the judicial process look to an objective standard that could be applied uniformly by all administrative and judicial judges in ascertaining contract intent, thereby achieving a national standard. (Pet., pp. 13-17. Indeed, if Petitioner's approach were used, neither Respondents' affidavits, nor Petitioner's affidavit are relevant to conclusions of law regarding the meaning of the contract unless the decision maker concludes that the contract is vague, and traditional, objective, rules of contract interpretation does not explain the ambiguity, and therefore evidence of contract intent are required to resolve the ambiguity.

The court's rejected this court's approach to the use of restatement in labor disputes, which was erroneous, and therefore, this court ought to take this case to resolve issue, and reject the approach of the lower courts as inconsistent with congressional intent of a uniform standard which adequately fulfills the public policy of protecting union members. (*E.g., Lewis v. Benedict Coal Corp.*, 361, U.S. 459 (1960).)

B. RESPONDENTS HAVE NOT BEEN CANDID WITH THIS COURT AS TO THE "THIRD PARTY BENEFICIARY" THEORY.

Responsent's disingenuous argument that "the Supreme Court has explicitly held that collective bargaining agreements are not typical third-party beneficiary contracts." [cites] Therefore the rule ... is inapposite.... (Reply, p. 12.)" must be rejected.

Petitioner does not raise "third party beneficiary", but a rule favoring "protection of public policy" citing a number of cases from this Court. (Pet., pp. 17-19.) While it is true the court stated that CBAs are not typical third-party beneficiary contracts, it nevertheless looked to the public policy for guidance on contract meaning, interpretation, and enforcement to protect interests not before the court. (Ibid.)

As the respondents have not shown a valid reason why a rule of construction ought not be the uniform national standard, this court should grant the petition and resolve the issue in favor of petitioner.

CONCLUSION

WHEREFORE, for all, or any one of, the foregoing reasons, this court should grant the writ of *certiorari* to the United States Court Of Appeals For The Ninth Circuit, and summarily reverse and remand, or set the matter for briefing and argument.

Dated: May 27, 1994

RESPECTFULLY SUBMITTED,

JAMES JOSEPH LYNCH, JR
ATTORNEY AT LAW (SBN 85805)
P.O. BOX 336
SACRAMENTO, CA 95812-0336
(916) 448-7871

ATTORNEY FOR PETITIONER